

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GORDHANBHAI CHHOTABHAI PATEL

Versus

AMBALAL MULJIBHAI ROHIT

Appearance:

MR YATIN SONI for Petitioner

None present for Respondent No. 1

MR MC SHAH for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/12/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The plaintiff-appellant-petitioner directed this revision application under section 115, C.P.C. against the order dated 27-2-1998 of 3rd Extra Assistant Judge, Nadiad made in Civil Misc. Appeal No.307/97 under which the said appeal which has been filed against the order of

the Civil Judge (J.D.) Petlad dated 23-9-1997, under which Ex.5 filed by him in Regular Civil Suit No.112/93 has been dismissed, has been rejected.

3. Both the Courts below concurrently held that it is not a fit case where the plaintiff-petitioner should be granted temporary injunction. Learned first appellate court has recorded a finding of fact that the plaintiff has failed to establish his ownership and possession of the suit land. Learned trial court has also recorded this finding of fact against him. When both the Courts have concurrently held that the plaintiff-petitioner is not in possession of the suit land, no question does arise for grant of any temporary injunction to protect his possession on the disputed land.

4. There is yet another important aspect which is to be noticed. The plaintiff-petitioner has deliberately concealed a very very important fact from the courts. It is the case of the defendants-respondents that in the revenue record since 1957-58 the name of their father was continuing as cultivator in respect of land in dispute. The dispute regarding the entries in the revenue record in respect of the land in dispute has arisen between the parties. The Deputy Collector has dismissed the appeal of the defendants-respondents but they filed the revision against the order of the Deputy Collector in appeal before the Gujarat Revenue Tribunal and the said Tribunal has ordered both the parties to maintain status-quo. This appeal has been filed by the defendants-respondents much earlier to the date of filing of the suit by the plaintiff-petitioner and this fact has been concealed. This is an important and material fact in the matter and it would have a strong bearing also in these proceedings. This is a clear case where by concealment of this material fact the plaintiff-petitioner has made an attempt to get the order in his favour from the civil court.

5. Learned counsel for the plaintiff-petitioner admitted before this Court that in the revenue proceedings before the Gujarat Revenue Tribunal, interim relief has been granted in favour of the defendants-respondents. Taking into consideration the totality of the facts of this case as well as this conduct of the plaintiff-petitioner, I am satisfied that the findings of the court below recorded on the ownership and possession of the defendants-respondents of the suit land are not perverse.

6. In the result, this revision application fails

and the same is dismissed. Interim relief, if any, granted by this Court stands vacated. The petitioner is directed to pay costs of Rs.1000/- to the respondents.

zgs/-